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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/764,121

01/26/2004

Joseph Larsen JR.

7872

7590

02/09/2006

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EXAMINER

AYRES, TIMOTHY MICHAEL

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 02/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/764,121	<b>Applicant(s)</b> LARSEN, JOSEPH	
	<b>Examiner</b> Timothy M. Ayres	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____  | 6) <input type="checkbox"/> Other: ____                                     |

### **DETAILED ACTION**

This is a first office action on the merits of application SN 10/764,121.

#### ***Priority***

1. It is noted that this application appears to claim subject matter disclosed in prior Application No. 10/159,732, filed Jun. 3, 2002. A reference to the prior application must be inserted as the first sentence(s) of the specification of this application or in an application data sheet (37 CFR 1.76), if applicant intends to rely on the filing date of the prior application under 35 U.S.C. 119(e), 120, 121, or 365(c). See 37 CFR 1.78(a). For benefit claims under 35 U.S.C. 120, 121, or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all nonprovisional applications. If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference

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required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required. Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

***Drawings***

2. Color photographs and color drawings are not accepted unless a petition filed under 37 CFR 1.84(a)(2) is granted. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to include the following language as the first paragraph of the brief description of the drawings section of the specification:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings and black and white photographs have been satisfied. See 37 CFR 1.84(b)(2).

3. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the details of the carriage (36) as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several

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views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the U-shaped carriage (36) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

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Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification and the drawings only disclose two carriages (34) that are U-shaped and another carriage (36) that has an unclear shape. Based on the location limitations recited in the claims, the examiner considers the second carriage and the third carriage to be the U-shaped carriage (34) as seen in figures 2 and 8. Then as best understood by the examiner, the first carriage should be carriage (36), which is not supported by the specification to be U-shaped.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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8. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Regarding claim 1 it is indefinite for the first carriage to be located between the supporting rail and the pull out rail since neither rail is in contact with the other.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 1-3, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,244,678 to Dopp in view of US Patent Publication 2003/0197452 to Kung. Dopp teaches a guide assembly comprising a supporting rail (2) mounted to a furniture sidewall and a pull out rail (6) secured to the drawer. An intermediate rail (4) is mounted between the supporting rail (2) and the pull out rail (6). A first carriage (51)



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positioned between the supporting rail (2) and the intermediate rail (4). A second carriage (53) provided between the intermediate rail (4) and the pull out rail (6). The supporting rail (2) and the intermediate rail (4) having at least one stop (33,40,8,12) for limiting the movement of the pull out rail (6), the intermediate rail (4), and the first carriage (51) with respect to the supporting rail (6). The first and second carriages (51,53) have three walls and form a U-shaped member as best understood by the figures. Two of the walls have roller cages located on them with rollers in the cages as best seen in figures 11 and 12. One of the walls has a bumper (50, 52) at the forward edge that project forward and has a bumper (55,56) at the rearward edge that project rearward.

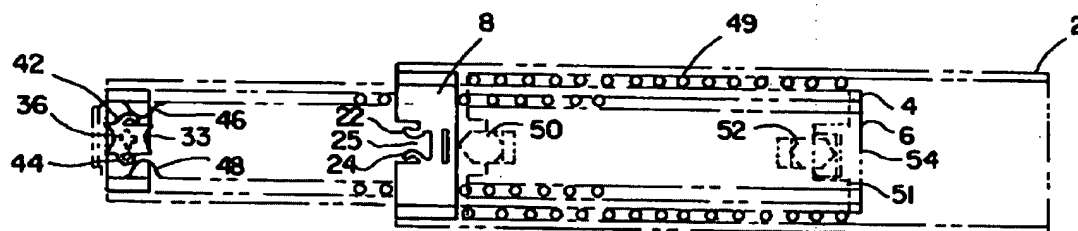


FIG. 11

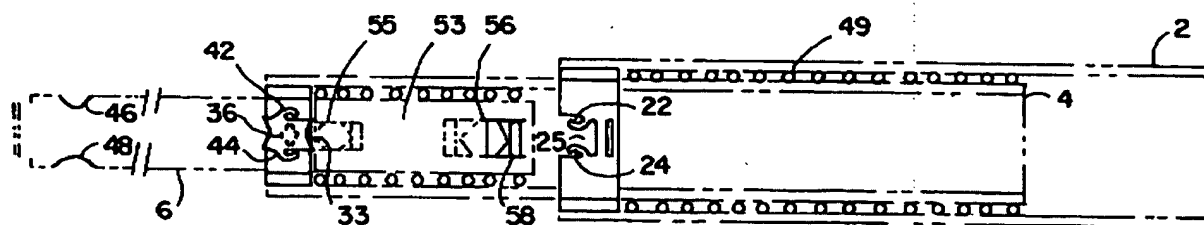
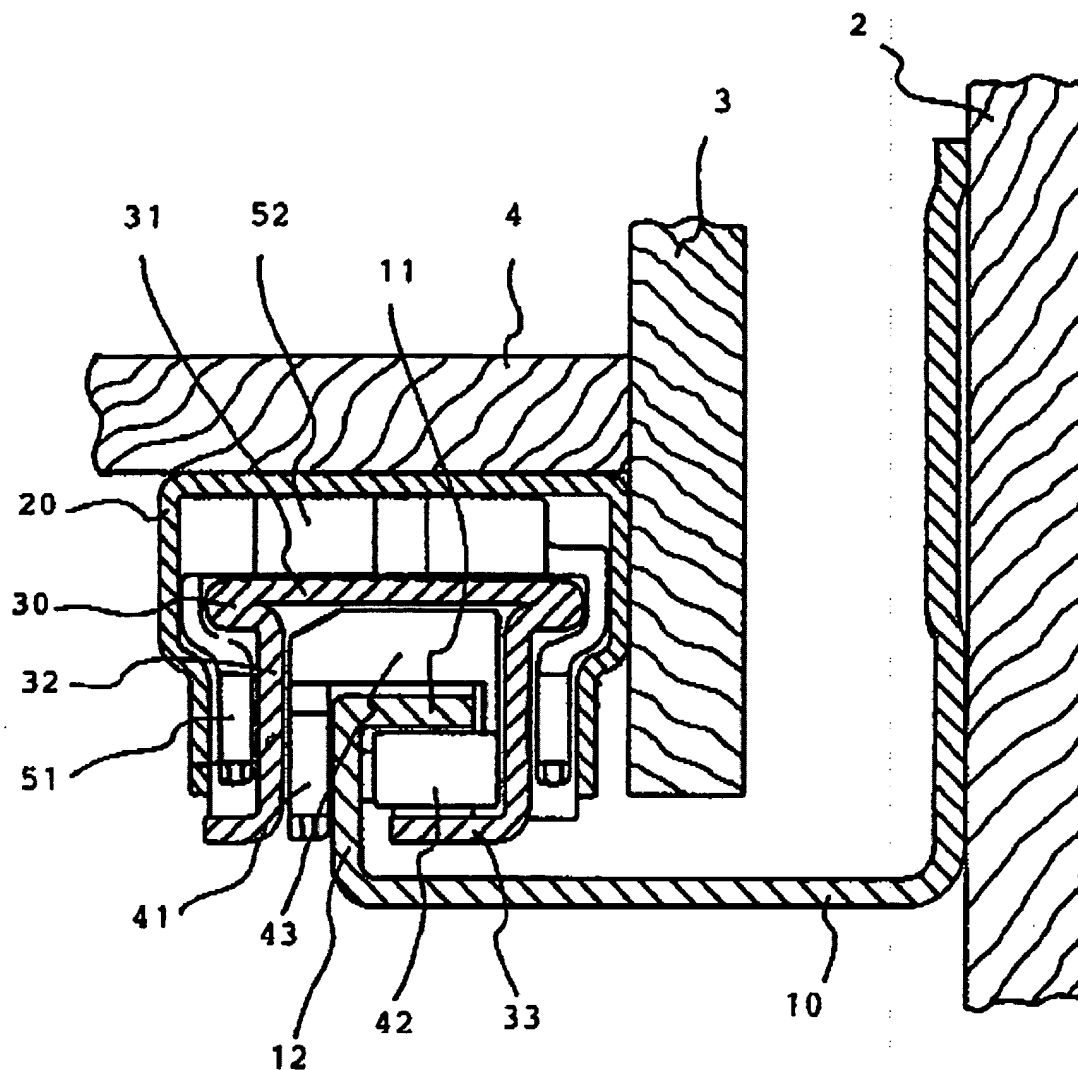


FIG. 12

Dopp '678 Figures 11 and 12

13. Dopp does not expressly disclose that all three of the walls have roller cages and a third carriage is held between the stop of the intermediate rail and the stop of the pull out rail in the forward position. Kung teaches a guide assembly with a pull out rail (20), a supporting rail (10), and an intermediate rail (30). A first carriage (40) is located between the intermediate rail and the supporting rail. A second carriage (50) is located between the intermediate rail and the pull out rail. The carriages are U-shaped with three walls each having at least one roller cage and roller (41,42,43, 51, 52). At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify Dopp by having roller cages with rollers located on the third wall as taught by Kung so that the slide is more durable and quiet (Kung '452, paragraph 3).

14. Regarding claim 2, it would have been obvious for a person of ordinary skill in the art to modify Dopp in view of Kung by having a third carriage in the same position between the rails as the second carriage since applicant has not disclosed that having two shorter carriages at this specific location solves any stated problem or is for any particular purpose and it appears that the guide assembly would perform equally well with a longer second carriage since it is functionally equivalent to the two shorter carriages that are claimed and works equally well. Note: It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.



Kung '452 Figure 1

15. Claims 4,5, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,244,678 to Dopp in view of US Patent Publication 2003/0197452 to Kung as applied to claim 1-3 and 6 above, and further in view of US Patent 4,272,139 to Fler. Dopp in view of Kung disclose every element as claimed and discussed above

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expect the bumper is rubber or soft plastic. Fler teaches a guide rail assembly with resilient bumpers (29, 33, 38, 43). The resilient bumpers are rubber (43) and are a soft plastic (38). At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify Dopp in view of Kung by making the bumpers out of either rubber or soft plastic as taught by Fler so the bumpers are more wear resistant (Fler '139, col. 3, lines 45-49, col. 4, lines 14-23).

### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent 5,181,781 to Wojcik discloses a bumper for a ball cage. US Patent 3,588,198 to Stewart discloses a guide assembly. US Patent 3,716,284 to Vogt discloses guide assemblies. US Patent 4,121,876 to Ratti discloses drawer guide assemblies. US Patent 4,659,237 to Rapp discloses a drawer guide. US Patent 5,026,176 to Jensen discloses an extendable rails system. US Patent 5,211,461 to Teufel discloses a vertically adjustable extension drawer. US Patent 5,733,026 to Munachen discloses a drawer slide. US Patent 6,296,338 to Stijns discloses a drawers lside with a bumper on the end of the ball cage. US Patent 6,033,047 to Hoffman discloses a drawer slide assembly. US Patent publication 2004/0000851 to Lam Harn discloses a guide rail assembly for a drawer where the carriage has three walls with rollers similar to that as claimed. US Patent 5,769,518 to Grabher disclose a pullout assembly for drawers with a carriage that has rollers on all three walls. US Patent 6,347,849 to Mutterthies disclose a pull-out drawer slide with rollers are three walls of a

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carriage. US Patent 5,344,227 to Rock discloses a drawer guide assembly that has a carriage and two slides in alignment between rails. US Patent 6,015,199 to Netzewr discloses a guide rail assembly with carriages that have buffers made form flexible plastic.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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